

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1859

Cir. Ct. No. 1995CF954164

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHOU SENG MOUA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
RICHARD J. SANKOVITZ, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Chou Seng Moua, *pro se*, appeals an order denying his second WIS. STAT. § 974.06 (2011-12) postconviction motion.¹ Because

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Moua's claims have either already been litigated or are procedurally barred, we affirm.

BACKGROUND

¶2 Moua pled guilty to first-degree reckless homicide of his wife and received a forty-year sentence. In March of 1997, Moua's postconviction counsel filed a motion arguing that Moua should be allowed to withdraw his guilty plea or that in the alternative, the circuit court should modify Moua's sentence. Among other things, counsel argued in the motion that Moua was confused by the proceedings. The circuit court denied the motion, and Moua appealed.² We affirmed and in the opinion explained that "Moua's argument that he should be allowed to withdraw his plea because he was unsure and confused during the proceedings is ... unavailing." See *State v. Moua*, No. 1997AP3240-CR, unpublished op. and order (WI App Feb. 16, 1999).

¶3 In October of 2006, Moua filed a *pro se* WIS. STAT. § 974.06 motion, challenging the effectiveness of his trial counsel on several bases. The circuit court denied the motion, explaining:

The defendant asserts that trial counsel was ineffective for failing to investigate possible lines of defense, failing to file a suppression motion, failing to present a defense at sentencing, failing to argue for a lesser offense, failing to have the interpreter take an oath, failing to explain the elements of the offense and the pros and cons of having a jury trial, and failing to explain the appellate process. Most of the defendant's claims are wholly conclusory and do not sufficiently state a viable claim for

² The Honorable John A. Franke presided over the plea proceedings, entered the judgment of conviction, and issued the order denying Moua's first postconviction motion.

relief. Others were addressed on appeal, at which time the guilty plea hearing was under scrutiny.

The circuit court further concluded that Moua's claims were precluded by the procedural bar of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).³ Moua appealed, and we affirmed. *State v. Moua*, No. 2006AP2709, unpublished slip op. (WI App Sept. 18, 2007).

¶4 In July of 2012, Moua filed the *pro se* WIS. STAT. § 974.06 motion underlying this appeal. Moua argued that the circuit court erred when it failed to, on its own motion, order a competency hearing for him. In related arguments, Moua asserted that his postconviction/appellate counsel and his trial counsel were ineffective for failing to raise issues relating to Moua's competency. Additionally, he argued that trial counsel was ineffective based on counsel's inability to communicate with Moua, for failing to argue for a certified interpreter, and for failing to argue mitigating factors at Moua's sentencing. Moua further asserted that his postconviction/appellate counsel refused to communicate with Moua and his daughter and failed to investigate concerns Moua had related to interpreter dialect and certification. As the State notes, Moua gave no explanation as to why he did not raise these issues in his first *pro se* § 974.06 motion filed in October of 2006.

¶5 The circuit court denied Moua's motion concluding that it was barred by *Escalona-Naranjo*. In its decision and order, the circuit court explained:

³ The Honorable William Sosnay issued the order denying Moua's first *pro se* WIS. STAT. § 974.06 motion.

The issues raised in the current motion could have been raised previously. The defendant is not entitled to file multiple postconviction motions under sec. 974.06, Wis. Stats., where he could have raised these issues before. The court finds there is no reason[] why he could not have done so, and therefore, the issues he now raises are deemed waived.

Moua sought reconsideration, and the circuit court denied his request.⁴

DISCUSSION

¶6 In this appeal, Moua argues: his trial counsel was ineffective for failing to request a competency hearing; his postconviction counsel was ineffective for failing to investigate trial counsel’s ineffectiveness in allowing Moua to plead guilty without fully understanding the proceedings; and his postconviction counsel was also ineffective for failing “to speak or respond” to Moua’s interpreter, for failing to investigate the interpreter’s dialect and certification, and for failing to confer with Moua and Moua’s family.

¶7 First, to the extent that Moua is repackaging issues that were previously raised, his arguments fail. “A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” See *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

¶8 Second, to the extent Moua’s motion raises “new” issues, he has not offered a “sufficient reason” for failing to raise them in his previous postconviction proceedings. See *Escalona-Naranjo*, 185 Wis. 2d at 184-85. As

⁴ The Honorable Richard J. Sankovitz issued the order denying Moua’s 2012 motion for postconviction relief and the order denying Moua’s motion for reconsideration.

such, his claims are procedurally barred. *See generally State v. Allen*, 2010 WI 89, ¶¶84-87, 328 Wis. 2d 1, 786 N.W.2d 124 (Motions containing only conclusory and legally insufficient allegations that postconviction counsel was ineffective are not sufficient reasons to circumvent *Escalona-Naranjo*'s procedural bar.). Allowing "[s]uccessive motions and appeals, which all could have been brought at the same time" is prohibited by WIS. STAT. § 974.06 and *Escalona-Naranjo*, which teaches that "[w]e need finality in our litigation." *Id.*, 185 Wis. 2d at 185.

By the Court.—Order affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

